



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
11/27/02	SM	Fav/1 amendment
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November 27, 2002

The Honorable James E. "Jim" King, Jr.
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 36 (2003)** – Senator Alex Diaz de la Portilla
Relief of Jonathan Snell and Erika Dorsey

SPECIAL MASTER'S FINAL REPORT

THIS IS A STIPULATED JUDGMENT CLAIM FOR \$337,000, AGAINST MIAMI-DADE COUNTY IN FAVOR OF JONATHAN SNELL AND ERIKA DORSEY FOR INJURIES THEY RECEIVED WHEN THEY WERE RUN OVER BY A MIAMI-DADE COUNTY BUS. MIAMI-DADE COUNTY SUPPORTS THE CLAIMS BILL.

FINDINGS OF FACT:

On May 26, 1998, at 7:00 p.m., Jonathan Snell, 20 months, and Erika Dorsey, 2 years 9 months, were with Nicole Snell, their aunt, on the southeast corner of the intersection of N.W. 14th Avenue and Miami Gardens Drive in Miami. A bus traveling north on N.W. 14th Avenue stopped at a stoplight in the right turn lane at the intersection with Miami Gardens Drive. Nicole Snell approached the front right side of the bus and demanded that she and the children be allowed to board. Because Nicole Snell and the children were not at a designated stop, the bus driver refused to let them board. When the stoplight turned green, the bus turned right onto Miami Gardens Drive. During the turn, the right rear wheels on the bus went over the curb on the corner of the intersection and over Jonathan's left leg and over both of Erika's legs. The bus driver was cited for reckless driving.

As part of the settlement between Jonathan Snell and Miami-Dade County, the parties agreed to a stipulated

judgment of \$400,000. As part of the settlement between Erika Dorsey and Miami-Dade County, the parties agreed to a stipulated judgment of \$137,000. The court appointed Guardian Ad Litem found the settlement appropriate. Payments of \$100,000 have been made to the guardianship accounts of each child. After medical expenses and attorney's fees and costs, Jonathan's and Erika's guardianship accounts contain \$8,505.92 and \$46,936.75, respectively. Their mother is the court-appointed guardian of these accounts. According to Miami-Dade County, it has the financial ability to fund a claim bill for the remaining \$337,000 out of the Miami-Dade Transit Authority budget without compromising the county's ability to provide necessary government services.

Jonathan Snell

Injuries and Treatment

Jonathan Snell's left leg was crushed below the knee; dead tissue and muscle were removed, and the leg bones were pinned together. He underwent surgery to restore the blood flow to his leg. His initial hospitalization after the accident lasted about 2 and one-half weeks. After this initial treatment for his injuries, Jonathan Snell had to walk on his tiptoes because the tendons in his ankle contracted. On October 11, 2000, Jonathan underwent additional surgery to lengthen tendons and muscles in his left foot and ankle to allow him to walk on the sole of his foot.

Latest Medical Evaluation

Dr. Steven Stricker conducted Jonathan Snell's latest medical evaluation on June 13, 2001. Dr. Stricker observed that his left leg is 8 mm longer than the right and has somewhat restricted ankle movement, causing Jonathan to walk with his toes pointed slightly outward. The doctor predicted that there is a 30-percent chance that Jonathan will require ankle surgery in the future. Dr. Stricker also predicted that the leg length discrepancy will probably require no treatment and cause no functional disturbance. Dr. Stricker concluded that Jonathan Snell will most likely have minimal disability and will most likely be able to perform all activities of daily living and most occupations.

Economic Damages Assessment

On October 5, 1999, Comprehensive Rehabilitation Consultants, Inc., completed an evaluation of Jonathan

Snell's loss of future income and cost of future medical care as the result of the bus accident. The evaluation concluded that the cost of Jonathan Snell's future medical care will be \$69,686.51 in 1998 dollars. The report also concluded that Jonathan Snell will have reduced earning potential because his injuries will limit the number of occupations that he will be able to perform. This loss of earnings is projected to be between \$154,859.91 and \$563,362.11 in 1998 dollars. The report further speculated that Jonathan might develop arthritis in his 50s, which will require assistance for services that may cost \$80,000 to \$120,000.

Current Health Status

During the Special Master hearing on October 21, 2002, Jonathan Snell appeared healthy and happy. He walked with little to no limp. His left leg was scarred from below his knee to his foot. His left leg below the knee appeared to have about one-third less girth than the right leg.

Erika Dorsey

Injuries and Treatment

The injuries and treatment to Erika Dorsey include several broken leg bones. Her right leg was fractured at the growth plate near her hip joint. Her left leg was fractured in three places. She was placed in traction and then in a body cast for 6 weeks. Her initial hospitalization after the accident lasted 2 and one-half weeks.

Latest Medical Evaluations

Erika Dorsey's latest medical evaluations were completed in June 1999. The evaluations found that Erika's left leg was one to two cm longer than her right leg. Erika's left knee also pointed outward as much as 25 degrees.

Economic Damages Assessment

On October 12, 1999, Comprehensive Rehabilitation Consultants, Inc., completed an evaluation of Erika Dorsey's loss of future income and cost of future medical care as the result of the bus accident. The report concluded that the cost of Erika's future medical care will be \$312,296.20 in 1998 dollars. The report also concluded that Erika Dorsey will have reduced earning potential because her injuries will limit the number of occupations that she will be able to perform. This loss of earnings is projected to be between \$66,721.20 and \$696,981.60 in 1998 dollars.

Current Health Status

During the Special Master hearing on October 21, 2002, Erika Dorsey appeared healthy and happy. She walked with little to no limp. The angulation of her left knee has largely been corrected. The claimants' attorney believes that no additional medical treatment will be necessary for Erika before she turns 18.

Legal Name

Erika Dorsey's legal name is Erika Dorsey Snell.

Protection of Minors' Funds

The current health status of each child shows that their recoveries were better than initially anticipated by the treating physicians and Comprehensive Rehabilitation Consultants, Inc. As such, the cost of future medical care and future income loss will likely be less than predicted by Comprehensive Rehabilitation Consultants, Inc. Further, the claimants' attorney believes that no additional medical treatment will be necessary for either child before they reach 18 or skeletal maturity. If funding is not necessary for medical treatment for the children before they turn 18, the claimants' attorney believes that the proceeds can be placed in an annuity that will begin making payments to the children after they turn 18 while preserving their access to Medicaid.

CONCLUSIONS OF LAW:

Under Senate Rule 4.81(3), SB 36 was assigned by the President to this Special Master to conduct a hearing to determine whether the elements of negligence are satisfied: duty, breach, proximate cause, and damages.

The duty to drive carefully and to avoid pedestrians has been clearly established by statute and case law. Section 316.1925(1), F.S., which prohibits careless driving states:

Any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person.

According to case law, motor vehicle drivers have a duty to attempt to avoid pedestrians on and off roadways. See e.g.,

City of Tallahassee v. Kaufman, 87 Fla. 119 (1924) (imposing liability on the City of Tallahassee for damages caused by a trailer pulled behind a fire truck that swept across a street corner and injured a pedestrian); *Craig v. School Board of Broward County*, 679 So. 2d 1219, 1222 (Fla. 4th DCA 1996) (finding the existence of a duty of a high degree of care is owed by a driver of a motor vehicle to children when children are present and a reasonably prudent driver would see them). Thus, the Miami-Dade County bus driver had a duty to look for pedestrians and avoid them, especially before driving over a curb on a street corner.

By failing to look for pedestrians before making the right turn and by failing to keep the bus on the roadway, the bus driver breached his duty to Jonathan Snell and Erika Dorsey causing their injuries. Because the bus driver was an employee of Miami-Dade County acting within the scope of his employment, Miami-Dade County is liable for the damages caused by its employee. See, e.g., *Stinson v. Prevatt*, 84 Fla. 416 (1922).

The evidence in this case was reviewed with recognition of the parties' settlement agreement. Settlements may be entered into for reasons unrelated to the actual merits of a claim or the validity of a defense. Consequently, settlement agreements between the parties to a claim bill are not necessarily binding on the Legislature, its committees, or the Special Master. All such agreements, however, must be evaluated and can be given effect, at least at the Special Master's level, if they are found to be reasonable. As such, the Special Master finds that this settlement agreement is reasonable and was negotiated in good faith by the attorneys representing the parties, and should be given effect.

The Legislature generally favors structured payments, guaranteed-term annuities, or special needs trusts in claims on behalf of those minors who have suffered serious or permanent injuries. Thus, the Special Master recommends that, after the payment of attorneys' fees and costs, and medical bills, the remaining proceeds be used to purchase a structured settlement for the purchase of annuities for each child. Upon reaching the age of majority, each child should be eligible to receive periodic payments from his or her structured settlement.

ATTORNEYS FEES:

Section 768.28, F.S., limits attorneys' fees to 25 percent of a claimant's total recovery by way of any judgment or settlement obtained pursuant to s. 768.28, F.S. An attorney for the claimant has submitted documentation attesting to compliance with this limitation.

RECOMMENDATIONS:

I recommend that Senate Bill 36 be amended as follows:

- 1) replace "Erika Dorsey" with "Erika Snell";
- 2) clarify that payments to Latiesha Snell are in her capacity as guardian; and
- 3) provide that the proceeds of the claim bill be used to purchase a structured settlement for the purchase of annuities for each child.

Upon reaching the age of majority, each child should be eligible to receive periodic payments from his or her structured settlement.

Based upon the foregoing, I recommend that Senate Bill 36 be reported FAVORABLY, AS AMENDED

Respectfully submitted,

Thomas Cibula
Senate Special Master

cc: Senator Alex Diaz de la Portilla
Faye Blanton, Secretary of the Senate
House Subcommittee on Claims